



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2021-0032; FRL-8688-02-R6]**

#### **Air Plan Approval; Oklahoma; Interstate Visibility Transport**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from the State of Oklahoma for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) and disapproving elements of two SIP submissions for the 2010 sulfur dioxide (SO<sub>2</sub>) and the 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS. These infrastructure SIP (i-SIP) submissions address how the existing SIP provides for implementation, maintenance, and enforcement of these NAAQS. The i-SIP requirements are to ensure that the Oklahoma SIP is adequate to meet the State's responsibilities under the CAA for these NAAQS. Specifically, this final rule addresses the interstate visibility transport requirements of the i-SIP for the 2015 Ozone NAAQS, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS under CAA section 110(a)(2)(D)(i)(II). We are also finalizing our determination that the deficiencies in the Oklahoma SIP that form the basis of our disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS are remedied by the existing Federal Implementation Plan (FIP) in place for the Oklahoma Regional Haze program, and that no further Federal action is required to address the disapproval.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2021-0032. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dayana Medina, EPA Region 6 Office, Regional Haze and SO<sub>2</sub> Section, 214-665-7241, [medina.dayana@epa.gov](mailto:medina.dayana@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our July 22, 2021 proposal (86 FR 38630). In that document, we proposed to approve the interstate visibility transport element of the i-SIP submission from the State of Oklahoma for the 2015 Ozone NAAQS. We also proposed to disapprove the interstate visibility transport elements of two i-SIP submissions from the State of Oklahoma: one for the 2010 SO<sub>2</sub> NAAQS and the other for the 2012 PM<sub>2.5</sub> NAAQS. We simultaneously proposed, in exercising our authority under section 110(c) of the Act, to find that the deficiencies in the Oklahoma SIP that formed the basis of our proposed disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS are already addressed by the existing FIP in place for the Oklahoma Regional Haze

program, and that no further Federal action is required. The reader should refer to our notice of proposed rulemaking for our evaluation of the Oklahoma i-SIP submissions and a detailed explanation of our rationale for this action.

The public comment period for the proposed action closed on August 23, 2021. We received one public comment concerning our proposed action. The comment is included in the publicly posted docket associated with this action at <https://www.regulations.gov>. Below we provide a summary of the comment along with our response. After careful consideration of the comment received, we have decided to finalize our action with no changes from the proposed action.

## **II. Response to Comments**

*Comment:* The commenter expressed appreciation for EPA's close evaluation of Oklahoma's SIP submittals and expressed support of EPA's determinations and actions identified in the proposed rule.

*Response:* We appreciate the commenter's support of our proposed rule.

*Comment:* The commenter stated that they do not object to EPA's determination, among others, that the existing FIP in place for the Oklahoma Regional Haze program is sufficient to remedy the proposed disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS but asked EPA to revisit, as necessary and appropriate in the future, whether the existing FIP continues to remain sufficiently stringent to comply with the requirements of the CAA, including whether it is adequately ensuring reasonable progress towards achieving Oklahoma's regional haze goals.

*Response:* First, we note that comments regarding the stringency of the existing Oklahoma Regional Haze FIP and whether it is sufficient to comply with the regional haze requirements of the CAA are beyond the scope of this action, and as such, we will not be responding to them. We also note that we are not implementing a new or revised

FIP in this action but are instead finding that the existing regional haze FIP also addresses the deficiencies in the Oklahoma SIP that form the basis of our disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS. EPA will review and take action on any future regional haze SIP revisions submitted by Oklahoma in separate future actions.

### **III. Impact on Areas of Indian Country**

As stated in the proposed action, following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S.Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country.<sup>1</sup> The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).<sup>2</sup>

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country.<sup>3</sup> As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including

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<sup>1</sup> A copy of the Governor's July 22, 2020 request can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Document ID No. EPA-R06-OAR-2021-0032-0017.

<sup>2</sup> In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

<sup>3</sup> A copy of EPA's October 1, 2020 approval can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Document ID No. EPA-R06-OAR-2021-0032-0018.

rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.<sup>4</sup> The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).<sup>5</sup>

As explained above, the EPA is disapproving the interstate visibility transport portions of the Oklahoma i-SIP submittals for the 2010 SO<sub>2</sub> and the 2012 PM<sub>2.5</sub> NAAQS because they do not meet the interstate visibility transport requirements of CAA Section 110(a)(2)(D)(i)(II) with respect to these NAAQS; however, the EPA is also making the determination that the deficiencies forming the basis of the disapproval of these SIPs are met through the existing FIP in place for the Oklahoma Regional Haze program. The FIP applies to all lands within the State regardless of land status. In practice, the FIP

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<sup>4</sup> EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

<sup>5</sup> On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020 SAFETEA approval. *See* <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. EPA is engaging in further consultation with tribal governments and expects to have discussions with the State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in Federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020 SAFETEA approval.

requirements, as discussed in the proposed rule, only apply to the Oklahoma Gas & Electric (OG&E) facilities, Sooner Station Units 1 and 2 (located within Noble County) and Muskogee, Units 4 and 5 (located within Muskogee County and the Cherokee Nation Reservation).

Additionally, the EPA is approving the interstate visibility transport element of the Oklahoma i-SIP for the 2015 Ozone NAAQS. Consistent with the D.C. Circuit's decision in *ODEQ v. EPA* and with EPA's October 1, 2020, SAFETEA approval, this portion of the SIP applies in certain areas of Indian country. Under EPA's October 1, 2020 SAFETEA approval, the SIP will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands. Because – per the State's request under SAFETEA – EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

This action does not result in the imposition of new requirements for the affected sources. Rather, it approves Oklahoma's determination that the regional haze measures that have already been approved and are currently being implemented satisfy the visibility transport requirements for the 2015 Ozone NAAQS and also makes the determination that the regional haze measures promulgated by EPA in the Oklahoma FIP that are currently being implemented address the deficiencies in the Oklahoma SIP with respect to visibility transport requirements for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS.

#### **IV. Final Action**

The EPA is approving the interstate visibility transport elements of the i-SIP submission from the State of Oklahoma for the 2015 Ozone NAAQS. We are also disapproving the interstate visibility transport elements of two i-SIP submissions from the

State of Oklahoma: one for the 2010 SO<sub>2</sub> NAAQS and the other for the 2012 PM<sub>2.5</sub> NAAQS. We simultaneously find, in exercising our authority under section 110(c) of the Act, that the deficiencies in the Oklahoma SIP that form the basis of our disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS are already addressed by the existing FIP in place for the Oklahoma Regional Haze program, and that no further Federal action is required.

## **V. Environmental Justice Considerations**

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”<sup>6</sup> EPA is providing additional analysis of environmental justice associated with this action. We are doing so for the purpose of providing information to the public, not as a basis of our final action.

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma.<sup>7</sup> The EPA then

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<sup>6</sup> <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

<sup>7</sup> See the United States Census Bureau’s QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.

compared the data to the national average for each of the demographic groups.<sup>8</sup> The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (35 percent versus 40 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (7.8 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is significantly higher than the national average (9.4 percent versus 1.3 percent). The percent of the population that is two or more races is higher than the national averages (6.3 percent versus 2.8 percent). The percent of people living below the poverty level in Oklahoma is higher than the national average (14.3 percent versus 11.4 percent). The percent of people over 25 with a high school diploma in Oklahoma is similar to the national average (88.6 percent versus 88.5 percent), while the percent with a Bachelor's degree or higher is below the national average (26.1 percent versus 32.9 percent).

This final rule approves Oklahoma's determination that the regional haze measures that have already been approved into the Oklahoma SIP and are currently being implemented satisfy the visibility transport requirements for the 2015 Ozone NAAQS and also makes the determination that the regional haze measures promulgated by EPA in the Oklahoma FIP that are currently being implemented address the deficiencies in the Oklahoma SIP with respect to the visibility transport requirements for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS. The existing regional haze measures on which Oklahoma and EPA are relying to satisfy the visibility transport requirements for these three NAAQS have resulted in significant emissions reductions, as discussed in the proposed rule. Some of the pollutants which form haze have also been linked to serious health problems, such as

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<sup>8</sup> See the United States Census Bureau's QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.



increased respiratory illness, decreased lung function, and even premature death.<sup>9</sup>

Therefore, we believe that these existing regional haze measures and resulting emissions reductions have contributed to reduced environmental and health impacts on all populations in Oklahoma, including people of color and low-income populations in Oklahoma. We conclude that this final rule does not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

## **VI. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This final action is not a “significant regulatory action” and was therefore not submitted to the Office of Management and Budget for review.

### *B. Paperwork Reduction Act (PRA)*

This final action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely approves a portion of one SIP submission as meeting the CAA and disapproves portions of two SIP submissions as not meeting the CAA.

### *D. Unfunded Mandates Reform Act (UMRA)*

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<sup>9</sup> SO<sub>2</sub>, nitrogen dioxide (NO<sub>2</sub>), and particulate matter are among six criteria air pollutants for which the EPA has established NAAQS. The CAA requires the EPA to periodically review the scientific basis for the NAAQS by preparing an integrated science assessment. The integrated science assessment provides the EPA’s evaluation and synthesis of the most policy-relevant science related to the health effects of the criteria pollutants. The most recent integrated science assessments for SO<sub>2</sub>, NO<sub>2</sub>, and particulate matter can be accessed here: <https://www.epa.gov/naaqs/sulfur-dioxide-so2-primary-air-quality-standards>; <https://www.epa.gov/naaqs/nitrogen-dioxide-no2-primary-air-quality-standards>; and <https://www.epa.gov/naaqs/particulate-matter-pm-air-quality-standards>.

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This final action approving the interstate visibility transport element of the Oklahoma i-SIP submission for the 2015 Ozone NAAQS and disapproving the interstate visibility transport elements of the Oklahoma i-SIP submissions for the 2010 1-hour SO<sub>2</sub> NAAQS and the 2012 PM<sub>2.5</sub> NAAQS (and making a determination that no further action is required to address the deficiencies identified in the disapproval) will apply to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in EO 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), on July 16, 2021, the EPA offered consultation to 38 tribal governments whose lands are located within the exterior

boundaries of the State of Oklahoma. EPA did not receive any comments from tribal governments or requests for consultation.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it merely approves a portion of one SIP submission as meeting the CAA and disapproves portions of two SIP submissions as not meeting the CAA.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely approves a portion of a SIP submission as meeting the CAA and disapproves portions of two SIP submissions as not meeting the CAA.

*K. Congressional Review Act (CRA)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may

take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the ***Federal Register***. A major rule cannot take effect until 60 days after it is published in the ***Federal Register***. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE ***FEDERAL REGISTER***]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Visibility transport.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 25, 2022.

**Earthea Nance,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart LL – Oklahoma**

2. Section 52.1928 is amended by adding paragraphs (e) and (f) to read as follows:

**§52.1928 Visibility protection.**

\* \* \* \* \*

(e) The portion of the State Implementation Plan pertaining to adequate provisions to prohibit emissions from interfering with measures required in another state to protect visibility for the 2015 ozone national ambient air quality standard (NAAQS), submitted on October 25, 2018, and clarified in a letter dated January 5, 2021, is approved.

(f) The portions of the State Implementation Plans pertaining to adequate provisions to prohibit emissions from interfering with measures required in another state to protect visibility for the 2010 1-hour SO<sub>2</sub> NAAQS, submitted on January 28, 2015, and the 2012 PM<sub>2.5</sub> NAAQS, submitted on June 16, 2016, are disapproved. The deficiencies in the Oklahoma SIP that form the basis of our disapproval of the interstate visibility transport portions of these two State Implementation Plan submissions are addressed by §52.1923.